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**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM L. WHITE, JR.,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

No. 45A05-0609-CR-495

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0412-FB-111, 45G01-0412-FB-112 & 45G01-0501-FB-2

May 21, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

William L. White, Jr. (“White”) pleaded guilty to fifteen Class B felony counts and was sentenced to an aggregate term of 66 years by the Lake Superior Court. He appealed his sentence; this court reversed and remanded for resentencing. White again appeals his sentence. We affirm.

Facts and Procedural History

The facts pertinent to this appeal are found in our court’s resolution of White’s first appeal of his sentence.

On December 21, 2004, while armed with a shotgun, White confined Parthenia Ford, Timothy Newell, and Theresa Johnson, and took money and cell phones from Ford and Johnson. On December 23, 2004, while armed with a shotgun, White confined Kathy Proffitt, Trista Breneman, and Alan Hart, and took money from Hart and Proffitt. On December 27 or 28, 2004, while armed with a shotgun, White took purses containing credit cards and cell phones from Caroline Haric and Paula Freyman, took a wallet containing money and credit cards from Kevin McKinley, took a purse containing money, a debit card and a camera from Elizabeth Freyman, and attempted to take a purse from Gina Stokes.

For the events of December 21, the State charged White with three counts of confinement as Class B felonies and two counts of robbery as Class B felonies. For his actions on December 23, the State charged White with three counts of Class B felony confinement and two counts of Class B felony robbery. For the final set of acts, the State charged White with four counts of Class B felony robbery and one count of Class B felony attempted robbery.

White pled guilty to all fifteen charges without a plea agreement. The court initially sentenced White to eighty-six years imprisonment. One month later, the court held a hearing and then modified White’s sentence in an order that provided:

In order to avoid a manifest injustice, the Court now modifies the sentence in the above cause as follows:

1. Count I: Robbery-seven and one-half (7 1/2) years consecutive with Count II, but concurrently with Counts III, IV and V.

2. Count II: Robbery-seven and one-half (7 1/2) years consecutive with Count I, but concurrently with Counts III, IV and V.
3. Count III: Confinement-six (6) years concurrent with Counts I, II, IV and V;
4. Count IV: Confinement-six (6) years concurrent with Counts I, II, III, and V.
5. Count V: Confinement-six (6) years concurrently with Counts I, II, III and IV.

The Court orders the defendant committed to the Department of Correction for a term of fifteen (15) years. Said sentence is ordered served consecutively with the sentences imposed in Cases: 45G01-0412-FB-00111 and 45G01-0412-FB-00112. The Court orders the defendant committed to the Department of Correction for a total term in all case[s] to sixty-six (66) years.

The reasons for the modification of sentence, pursuant to I.C. 35-38-1-17(a) are as follows:

1. On June 10, 2005, the defendant was sentenced to an aggregate term of eighty-six (86) years.
2. This aggregate sentence involved fifteen (15), Class B felony convictions, to which the defendant had pled guilty without the benefit of a negotiated plea agreement.
3. The defendant was 19 years of age at the time of sentencing and his criminal history was absent of any adult misdemeanor or felony convictions, and the defendant did not have any juvenile adjudications.
4. The defendant was addicted, according to the presentence investigation report, to illegal controlled substances and sufficient weight was not given to the defendant in mitigation in light of this addiction.
5. A combination of consecutive and concurrent sentences are nevertheless appropriate given the nature and circumstances of the crimes committed.
6. However, the interests of justice cannot support an eighty-six (86) year aggregate sentence given the defendant's admission of responsibility to each of the crimes committed.

Therefore, the defendant's sentence is now reduced as noted above, the result of which is an aggregate sentence, for all fifteen (15) Class B felony convictions, of sixty-six (66) years.

White v. State, 847 N.E.2d 1043, 1044-45 (Ind. Ct. App. 2006) (footnotes and citation omitted).

White appealed his sentence, arguing that it did not comport with the holding of Marcum v. State, 725 N.E.2d 852 (Ind. 2000). We reversed White's sentence and remanded to the trial court for resentencing:

[b]ecause the trial court did not explain why the balancing of the aggravators and mitigators justified the imposition of consecutive minimal sentences, we are constrained to hold this trial court abused its discretion in ordering some of the sentences served consecutively when its implicit balancing of the aggravators and mitigators led it to impose sentences shorter than the presumptive.

Id. at 1047. However, we specifically noted that the sentence imposed on remand could be the same sentence, if the court properly supported its sentence with appropriate findings. Id.

On August 4, 2006, the trial court conducted a new sentencing hearing and found as aggravating circumstances 1) the number of victims that were harmed as a result of defendant's acts, 2) the multiple and separate offenses the defendant committed in a short period of time, and 3) the manner in which defendant used a deadly weapon. Appellant's App. pp. 20, 42, 59.

The trial court also found White's lack of juvenile history, guilty plea, acceptance of responsibility, and age as mitigating factors. Id. pp. 5-6. The trial court went on to note that White's drug problem was a mitigating factor, but declined to assign it significant weight. Id.

The court then balanced the aggravating and mitigating circumstances and explained its reasoning:

it's the totality of these circumstances. It's the absolute harm that you created in these individual acts, this crime spree that outweighs these mitigating factors, they absolutely outweigh them. And that's why I gave

you a consecutive sentence. These aggravators—this aggravator, the separate number of victims, the absolute harm that you caused them, the terror that you created in your acts, that’s the aggravating factor that outweighs your mitigating factors. These are the aggravating factors that requires me to give you consecutive sentences on some of these counts...[Sixty-six] years in a proper combination of...concurrent and consecutive sentences, given all the factors at hand.

Tr. p. 6. White now appeals his sentence.

Discussion and Decision

White argues that upon resentencing, the trial court improperly discounted the mitigating weight of his drug addiction. He further contends “the length of the cumulative sentence is not supported when appropriate weight is given to the mitigating factors, including the ‘deleted’ factor of White’s drug addiction which was an original mitigator.” Br. of Appellant at 6.

However, as set forth above, the trial court clearly stated that while it considered White’s addiction a mitigating circumstance, it did not find it significantly mitigating. The court explicitly stated that it was imposing consecutive sentences because the aggravating factor of the harm to each victim outweighed the mitigating factors. We find no error in the trial court’s sentencing statement.

Finally, White argues that his aggregate sentence is inappropriate. Appellate courts “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the [c]ourt finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B) (2007). The “nature of the offense” portion of the standard speaks to the statutory presumptive sentence for the class of crimes to which the offense belongs. See Williams v. State, 782

N.E.2d 1039, 1051 (Ind. Ct. App. 2003), trans. denied. That is, the presumptive sentence is intended to be the starting point for the court's consideration of the appropriate sentence for the particular crime committed. Id. The character of the offender portion of the standard refers to the general sentencing considerations and the relevant aggravating and mitigating circumstances. Id.

White pled guilty to eight counts of Class B felony robbery, one Class B felony attempted robbery, and six counts Class B felony confinement: fifteen crimes all occurring within a two-week span. While armed with a sawed-off shotgun, he demanded or took wallets, purses, cash and cell phones from nine different people. Under these facts and circumstances, we cannot conclude that White's sentence is inappropriate.

Affirmed.

NAJAM, J., and MAY, J., concur.